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C O U N C I L      C O M M U N I C A T I O N

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TO:     THE CITY COUNCIL  
FROM:   THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE  
NOVEMBER 15, 1989

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SUBJECT:   NEED TO TAKE ACTION ON ITEM NOT ON POSTED AGENDA (GOVERNMENT CODE §54954.2(b)(2)  
              IN RE CONDEMNATION PROCEEDINGS   (5200 E. SARGENT ROAD: DIEKMAN PROPERTY)


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PREPARED BY:                   City Attorney

BACKGROUND INFORMATION:   Since the matter of a closed session on the subject of threatened litigation in the 5200 E. Sargent Road eminent domain proceedings did not appear on the November 15, 1989 agenda, in order for the Council to meet in closed session at that meeting, it was necessary to have a preliminary Council four-fifths vote, finding pursuant to Government Code §54954.2(b)(2), that the need to take action arose after the agenda was printed and posted.

Since the City was made aware on November 15, 1989 of certain proposals by the property owners which might avoid the need for condemnation, and the agenda for November 15, 1989 had been posted on November 10, 1989, the Council had a basis to find that there was need to meet in closed session. A unanimous vote of the five member Council was first obtained, and the matter was appropriately discussed in closed session on November 15, 1989.

Respectfully submitted,

  
BOB McNATT  
City Attorney

BM:vc

CCCLOSED/TXTA.01V

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## C O U N C I L      C O M M U N I C A T I O N

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TO:     THE CITY COUNCIL  
FROM:   THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE  
NOVEMBER 15, 1989

---

SUBJECT: CONDEMNATION AT 5200 EAST SARGENT ROAD

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PREPARED BY:                   City Attorney

RECOMMENDED ACTION:       Council consideration of adopting the attached Resolution of Necessity to Acquire Certain Real Property by Eminent Domain (5200 East Sargent Road).

DISCUSSION:               As the Council is aware, the City is presently proceeding with plans for the construction of an electric utilities industrial substation at the above location. The site is presently owned by the heirs of the Diekman family. Total size of the parcel is approximately 15 acres. Under present plans, construction was to begin in January 1990, and be completed in June 1990, in time to deal with summertime peak demand periods.

Environmental documents have been finalized and the City has been negotiating with the owners for more than one year. The owners have never expressed opposition to the City's plans, and, in fact, had indicated a willingness to sign a Right of Entry form allowing the City to commence construction before the final sales price was determined.

However, it now appears that a voluntary sale may not be possible between the City and the owners. Our initial belief that the owners would give voluntary consent for possession by the City while negotiations on price continued, was erroneous, and the owners via their attorney have declined to give such consent. The asking price in the most recent proposal is nearly double the figure in the City's original appraisal, and the owners have placed other conditions on the sale.

The only apparent alternative left to the City if construction is to be accomplished anywhere near the timetable established, is to commence condemnation and seek an order of immediate possession from the Court. Because there is an occupied residence on the site, a minimum of 90 days would be required to obtain possession if the owners do not voluntarily have the premises vacated prior to that time.

An initial decision to be made by the Council is the size of the parcel which may be condemned. The City originally considered acquisition of the entire 15 acre Diekman parcel in order to accommodate the substation and accessory uses. At the request of the owners, and in the spirit of cooperation, the City was willing to modify its plans and split the parcel at the site of the proposed extension of Thurman Road. That would have created an 8.1 acre parcel north of the Thurman Road extension for the substation site, and

COUNCIL COMMUNICATION  
5200 East Sargent Road  
November 15, 1939  
Page Two

would have left the owners with a 7 acre parcel adjacent to Thurman Road on the south side.

If it becomes necessary to acquire the site by eminent domain, the Council may wish to again consider the entire 15 acre parcel, since the Electric Utility has indicated it has use for the entire piece, for the substation and accessory uses. The Notice provided to the owners describing the condemnation proposed, included the entire 15 acre parcel. Of course, the Council has discretion to scale that back and acquire only the smaller 8.1 acre parcel north of the Thurman Road extension, if it wishes to accommodate the owners.

Under applicable law, Resolutions of Necessity must be adopted by 2/3 vote of the Council, or in our situation, by the affirmative vote of 4 Council members.

In the meantime, negotiations are continuing with the owners to see if a mutually-agreeable solution can be reached.

Requests to address the Council at the hearing on the issue of necessity have been received both from the owners and the tenant. Under State law, the issue of valuation should not be discussed at this hearing.

Respectfully submitted,



BOB McNATT  
City Attorney

BM:vc

RESOLUTION NO. 89-169

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI

RESOLUTION OF NECESSITY TO ACQUIRE CERTAIN REAL PROPERTY BY EMINENT DOMAIN FOR MUNICIPAL PURPOSES, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.220 ET SEQ. (5200 EAST SARGENT ROAD: DIEKMAN PROPERTY)

WHEREAS, on October 18, 1989, the Council of the City of Lodi set a hearing to consider a Resolution of Necessity to Acquire Certain Real Property, described below; and

WHEREAS, on November 15, 1989, the Lodi City Council held a hearing in the City Council Chambers, Carnegie Forum, 305 West Pine Street, Lodi, in order to determine the necessity of acquisition of said real property by eminent domain proceedings for the purposes of a municipal industrial electrical substation;

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows:

The Lodi City Council finds, determines, and hereby declares:

1. That the public interest, necessity, and convenience require the acquisition, construction, and completion of a public improvement, to wit: the acquisition of a site for an industrial electric substation, on and across certain real property located at 5200 East Sargent Road, within San Joaquin County, described as follows:

That certain real property situated in the County of San Joaquin, State of California, described as follows:

Being a portion of the North one-half of the Northeast Quarter of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, particularly described as follows, to wit:

Commencing for the same at a point 2123 feet West and 100 feet South of the Northeast corner of said Section 7, and running thence Southerly and parallel with the East line of said Section 7 to the South line of the North one-half of said Northeast Quarter of Section 7; thence Westerly along the South line of the North one-half of said Northeast Quarter of said Section 7, 529 feet to the Southwest corner of the North one-half of the said Northeast Quarter of said Section seven; thence Northerly along the West line of said Quarter Section to a point on said Quarter Section line 100 feet South of the Northwest corner of said Quarter Section; thence Easterly and parallel with said North Section 7, 529 feet to the point of beginning, containing approximately 15.2 acres  $\pm$ .

AND

2. That the real property hereinafter described is suitable, adaptable, necessary, and required for the public use of said City of Lodi, as hereinabove set forth.

3. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

4. That the City of Lodi acquire the hereinafter described real property for an industrial electric substation by donation, purchase, or by condemnation in accordance with the provisions of the Code of Civil Procedure of the State of California relating to eminent domain. That the City Attorney is hereby authorized to prosecute in the name of the City of Lodi, any and all actions or proceedings required to acquire the necessary property and/or to fix the compensation to be paid for property damage resulting from the construction and maintenance of said improvements; and in the absence of a satisfactory price agreement with the owner of the land, the City Attorney is hereby directed to immediately commence proceedings under Title Seven, Chapter Three of the Code of Civil Procedure of the State of California, to condemn the property hereinafter described for the purpose of taking said land for the public use of said City as hereinabove set forth.

5. To make application to a Court of competent jurisdiction for an order fixing the amount of such security in the way of money deposits as said Court may direct, and for an order permitting said City of Lodi to take immediate possession and use of said property, or interest in real property, or existing improvements for the public use as hereinabove set forth; to make deposit of such security or monies in such amount so fixed and determined and in such manner as said Court in which said condemnation proceedings are pending may direct.

6. The real property or interest in real property which the City of Lodi is by this Resolution authorized to acquire for said public improvements is situated in the County of San Joaquin, State of California, as described above.

7. Pursuant to Government Code Section 7267.2, a written offer was made to the owners of record in the amount of \$380,000.

8. BE IT FURTHER RESOLVED, that the City Attorney be and hereby is authorized and directed to commence and maintain in the name of the City of Lodi, such actions and proceedings of eminent domain in the Superior Court of California, County of San Joaquin, as are necessary to acquire, for the purposes and uses aforesaid, that certain real property which is situated in the County of San Joaquin, as described above.

DATED: November 15, 1989

I hereby certify that Resolution No. 89-169 was passed and adopted by the City Council of the City of Lodi in a regular meeting held by the following vote:

Ayes: Council Members -

Noes: Council Members ..

Absent: Council Members -

Alice M. Reimche  
City Clerk

RESEMD0.2/TXTA.01V

CITY COUNCIL

JOHN R. (Randy) SNIDER, Mayor  
DAVID M. HINCHMAN  
Mayor Pro Tempore  
EVELYN M. OLSON  
JAMES W. PINKERTON, Jr.  
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
CALL BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
TELECOPIER: (209) 333-6795

THOMAS A. PETERSON  
City Manager

ALICE M. REIMCHE  
City Clerk

BOB McNATT  
City Attorney

October 27, 1989

Richard D. Diekman  
15415 N. Curry Avenue  
Lodi, CA 95240

Stanley A. Diekman  
5618 Coffee Road  
Modesto, CA 95355

Sally D. Ryan  
369 Koodstock Lane  
Los Altos, CA 94022

Dear Property Owner:

As stated in the enclosed "Amended Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property by Eminent Domain", you have been identified as the owner of real property proposed to be acquired for public use by the City of Lodi. Government agencies, such as the City of Lodi, are authorized under the power of eminent domain, to acquire real property for public use upon payment of reasonable compensation to the owner(s) of the property.

The enclosed Amended Notice is to inform you of the hearing referred to as a "necessity hearing", to be held before the Lodi City Council at the time and date indicated, when the Council will consider the necessity of acquiring your property. Please note that the City Council will consider only the issue of necessity at the necessity hearing; the Council will not discuss the amount to be paid for your property or any other matter unrelated to the issue of necessity. If it is determined at the hearing that acquisition of your property is necessary, the Council will authorize the City Attorney to commence, at the appropriate time, a lawsuit in the Superior Court where the amount of compensation to which you are entitled for your property will be determined. This does not mean, however, that negotiations for the purchase of your property cannot be continued.

Please read the enclosed Amended Notice carefully; it provides specific instructions for you to follow if you wish to appear before the City Council at the necessity hearing. If you have any questions, please feel free to contact me at (209) 333-6702 or Sharon Blaufus at (209) 333-6658.

Sincerely yours,

*Alice M. Reimche*  
ALICE M. REIMCHE  
City Clerk

BM/AMR :vc

enclosure

cc: Michael C. Normoyle, Esquire  
3340 Tully Road, Suite A  
Modesto, CA 95350

PWSARGNT/TXTA.01V

LAW OFFICES OF  
NORMOYLE & NEWMAN  
A PROFESSIONAL CORPORATION

RECEIVED  
MICHAEL C. NORMOYLE  
RUSSELL A. NEWMAN 27 11 8 83  
BART W. BARRINGER  
WYLIE R. CASHMAN

3340 TULLY ROAD - SUITE A  
MODESTO, CALIFORNIA 95350-0694

TELEPHONE (209) 521-9521  
TELECOPIER (209) 521-4968

ALICE M. REIMCHE  
CITY CLERK  
CITY OF LODI

October 25, 1989

City Clerk  
City of Lodi  
221 West Pine Street  
Call Box 3006  
Lodi, California 95241-1910

Attention: Alice M. Reimche, City Clerk

RE: November 15, 1989 "Necessity Hearing" - Diekman/Ryan  
property in Lodi, California

Dear Ms. Reimche:

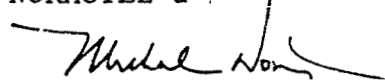
This letter is written on behalf of my clients, Richard Diekman, Stanley Diekman and Sally Ryan, in response to a letter from your office dated October 18, 1989. Through that letter, you informed myself and my clients of a "necessity hearing" scheduled before the Lodi City Council at 7:00 p.m. on November 15, 1989.

At the present time, my clients and I are conducting informal discussions with representatives of the City of Lodi about the City's possible purchase of a portion of my client's real property. Because it is not certain whether our discussions will be finished by November 15, or what the status of our discussions will be as of that date, I am writing to formally request that if the need arises, I be permitted to address the City on November 15, 1989 during the Council's consideration of this issue. I would be there in a representative capacity on behalf of all of my clients. It may be that one or more of my clients would wish to speak at that time as well.

I will assume that this letter is adequate to comply with the City's "request for appearance" requirements. If, for any reason, you need more information, please contact me immediately.

Sincerely,

NORMOYLE & NEWMAN

  
Michael C. Normoyle

MCN:vlf

cc: Stanley Diekman  
Richard Diekman  
Sally Ryan



CITY COUNCIL

JOHN R. (Randy) SNIDER, Mayor  
DAVID M. HINCHMAN  
Mayor Pro Tempore  
EVELYN M. OLSON  
JAMES W. PINKERTON, Jr.  
FRED M. REID

CITY OF LODI

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(209) 334-5634  
TELECOPIER: (209) 333-6795

THOMAS A. PETERSON  
City Manager  
ALICE M. REIMCHE  
City Clerk  
808 McNATT  
City Attorney

October 27, 1989

Catriona Linn  
5200 E. Sargent Road  
Lodi, CA 95240

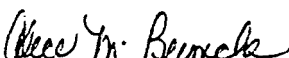
Dear Mrs. Linn:

You have been identified as an interested party regarding real property proposed to be acquired for public use by the City of Lodi. Government agencies, such as the City of Lodi, are authorized under the power of eminent domain, to acquire real property for public use upon payment of reasonable compensation to the owner(s) of the property.

The enclosed Amended Notice is to inform you of the hearing referred to as a "necessity hearing", to be held before the Lodi City Council at the time and date indicated, when the Council will consider the necessity of acquiring the property. Please note that the City Council will consider only the issue of necessity at the necessity hearing; the Council will not discuss the amount to be paid for the property or any other matter unrelated to the issue of necessity. If it is determined at the hearing that acquisition of the property is necessary, the Council will authorize the City Attorney to commence, at the appropriate time, a lawsuit in the Superior Court where the amount of compensation to which the property owners are entitled for the property will be determined. This does not mean, however, that negotiations for the purchase of the property cannot be continued.

Please read the enclosed Amended Notice carefully; it provides specific instructions for you to follow if you wish to appear before the City Council at the necessity hearing. If you have any questions, please feel free to contact me at (209) 333-6702 or Sharon Blaufus at (209) 333-6658.

Sincerely yours,

  
ALICE M. REIMCHE  
City Clerk

BM/AMR:vc

enclosure

cc: Michael C. Normoyle, Esquire  
3340 Tully Road, Suite A  
Modesto, CA 95350

PWSARGNT.3/TXTA.01V

Ilse Reimche City Clerk  
221, West Pine St,  
Lodi, CA. 95241

CARRIONA LINN,  
5200, EAST SARGENT RD  
LODI, CA.  
95240

November 4<sup>th</sup>, 1989

Dear Ms. Reimche,

I am in receipt of your letter, dated October 27<sup>th</sup>, regarding the proposed acquisition by the City of Lodi, of the said real property that myself and children are currently residing.

Pursuant to your letter, I am hereby requesting to appear, and be heard concerning the conditions set forth in the California Code of Civil Procedure Section 1240.030.

I will be contacting my attorney this week regarding your letter and unless I hear otherwise will be present at the November 15<sup>th</sup> hearing in the City Council Chambers. My phone number is 333-7461 and I can be reached after 4 p.m.

Yours Sincerely,

Carriona J.P. Linn

RESOLUTION NO. 89-169

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI

RESOLUTION OF NECESSITY TO ACQUIRE CERTAIN REAL PROPERTY BY EMINENT DOMAIN FOR MUNICIPAL PURPOSES, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.220 ET SEQ. (5200 EAST SARGENT ROAD: DIEKMAN PROPERTY)

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WHEREAS, on November 15, 1989, the Lodi City Council held a hearing in the City Council Chambers, Carnegie Forum, 305 West Pine Street, Lodi, in order to determine the necessity for acquisition of said real property by eminent domain proceedings for the purposes of a municipal industrial electrical substation;

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows:

The Lodi City Council finds, determines, and hereby declares:

1. That the public interest, necessity, and convenience require the acquisition, construction, and completion of a public improvement, to wit: the acquisition of a site for an industrial electric substation, on and across certain real property located at 5200 East Sargent Road, within San Joaquin County, described as follows:

1. Acquisition in fee.

Commencing at the northwest corner of the Northeast Quarter of Section 7, T3N, R7E, MDB&M, thence S 0°32'00" E, 100.15 feet, along the west line of said Quarter Section to the True Point of Beginning, thence S 87°20'49" E, 533.68 feet, along the southerly line of the Central California Traction Company, thence S 0°47'19" E, 658.99 feet, along a line parallel with the east line of said Section 7, thence N 87°24'33" W, 536.59 feet, thence N 00°32'00" W, 659.40 feet along said west line to the True Point of Beginning, containing 8.1 acres, more or less.

2. Parcels 2 and 3 (easement only).

Easement 1

Commencing at the northwest corner of the Northeast Quarter of Section 7, T3N, R7E, MDB&M, thence S 0°32'00" E, 759.55 feet along the west line of said Quarter Section to the True Point of Beginning, thence S 87°24'33" E, 40.0 feet, thence S 2°35'27" W, 32.0 feet, thence N 87°24'33" W, 38.25 feet, to said west

line, thence N 0°32'00" W, 32.05 feet along said west line to the True Point of Beginning.

Easement 2

A 60 kv Public Utility Easement being more particularly described as follows:

Commencing at the northwest corner of the Northeast Quarter of Section 7, T3N, R7E, MDB&M, thence S 0°32'00" E, 791.60 feet along the west line of said Quarter Section to the True Point of Beginning, thence S 87°24'33" E, 16.52 feet, thence S 00°32'00" E, 542.75 feet along a line parallel with said west line to the south line of the north one-half of said Northeast Quarter, thence N 87°33'30" W, 16.53 feet along said south line, thence N 0°32'00" W, 542.80 feet along said west line to the True Point of Beginning, totalling .24 acres, more or less, (both easements combined).

AND

2. That the real property hereinafter described is suitable, adaptable, necessary, and required for the public use of said City of Lodi, as hereinabove set forth.

3. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

4. That the City of Lodi acquire the hereinafter described real property for an industrial electric substation by donation, purchase, or by condemnation in accordance with the provisions of the Code of Civil Procedure of the State of California relating to eminent domain. That the City Attorney is hereby authorized to prosecute in the name of the City of Lodi, any and all actions or proceedings required to acquire the necessary property and/or to fix the compensation to be paid for property damage resulting from the construction and maintenance of said improvements; and in the absence of a satisfactory price agreement with the owner of the land, the City Attorney is hereby directed to immediately commence proceedings, under Title Seven, Chapter Three of the Code of Civil Procedure of the State of California, to condemn the property hereinafter described for the purpose of taking said land for the public use of said City as hereinabove set forth.

5. To make application to a Court of competent jurisdiction for an order fixing the amount of such security in the way of money deposits as said Court may direct, and for an order permitting said City of Lodi to take immediate possession and use of said property, or interest in real property, or existing improvements for the public use as hereinabove set forth; to make deposit of such security or monies in such amount so fixed and determined and in such manner as said Court in which said condemnation proceedings are pending may direct.

6. The real property or interest in real property which the City of Lodi is by this Resolution authorized to acquire for said public improvements is situated in the County of San Joaquin, State of California, as described above.

7. Pursuant to Government Code Section 7267.2, a written offer was made to the owners of record in the amount of \$269,100.

8. BE IT FURTHER RESOLVED, that the City Attorney be and hereby is authorized and directed to commence and maintain in the name of the City of Lodi, such actions and proceedings of eminent domain in the Superior Court of California, County of San Joaquin, as are necessary to acquire, for the purposes and uses aforesaid, that certain real property which is situated in the County of San Joaquin, as described above.

DATED: November 15, 1989

I hereby certify that Resolution No. 89-169 was passed and adopted by the City Council of the City of Lodi in a regular meeting held by the following vote:

Ayes: Council Members - Hinchman, Olson, Pinkerton, Reid and Snider (Mayor)

Noes: Council Members - None

Absent: Council Members - None

*Alice M. Reimche*  
Alice M. Reimche  
City Clerk

89-169

RES89169/TXTA.02J